



中华人民共和国国家知识产权局

邮政编码: 100101 北京朝阳区北辰东路 8 号汇宾大厦 A0601 柳沈知识产权律师事务所 马莹 邵亚丽		 审查员签章	 审查业务专用章
申请号	02118690.1	部门及通知书类型	9-C
申请人	三星电子株式会社		
发明名称	包含版权信息的记录介质、记录设备及其记录方法		

第一次审查意见通知书

1. ☒ 依申请人提出的实审请求, 根据专利法第 35 条第 1 款的规定, 审查员对上述发明专利申请进行实质审查。

☐ 根据专利法第 35 条第 2 款的规定, 国家知识产权局决定自行对上述发明专利申请进行审查。

2. ☒ 申请人要求以在:

_____ 韩国 _____ 专利局的申请日 2001 年 3 月 8 日为优先权日,
 _____ 专利局的申请日 _____ 年 _____ 月 _____ 日为优先权日,
 _____ 专利局的申请日 _____ 年 _____ 月 _____ 日为优先权日,
 _____ 专利局的申请日 _____ 年 _____ 月 _____ 日为优先权日,
 _____ 专利局的申请日 _____ 年 _____ 月 _____ 日为优先权日。

☒ 申请人已经提交了经原申请国受理机关证明的第一次提出的在先申请文件的副本。

☐ 申请人尚未提交经原申请国受理机关证明的第一次提出的在先申请文件的副本, 根据专利法第 30 条的规定视为未提出优先权要求。

3. ☐ 申请人于 _____ 年 _____ 月 _____ 日和 _____ 年 _____ 月 _____ 日提交了修改文件。

经审查, 其中: _____ 年 _____ 月 _____ 日提交的 _____ 不能被接受;

_____ 年 _____ 月 _____ 日提交的 _____ 不能被接受;

因为上述修改 ☐ 不符合专利法第 33 条的规定。 ☐ 不符合实施细则第 51 条的规定。

修改不能被接受的具体理由见通知书正文部分。

4. ☒ 审查是针对原始申请文件进行的。

☐ 审查是针对下述申请文件的:

申请日提交的原始申请文件的权利要求第 _____ 项、说明书第 _____ 页、附图第 _____ 页;
 _____ 年 _____ 月 _____ 日提交的权利要求第 _____ 项、说明书第 _____ 页、附图第 _____ 页;
 _____ 年 _____ 月 _____ 日提交的权利要求第 _____ 项、说明书第 _____ 页、附图第 _____ 页;
 _____ 年 _____ 月 _____ 日提交的权利要求第 _____ 项、说明书第 _____ 页、附图第 _____ 页;
 _____ 年 _____ 月 _____ 日提交的说明书摘要, _____ 年 _____ 月 _____ 日提交的摘要附图。

5. ☐ 本通知书是在未进行检索的情况下作出的。

☒ 本通知书是在进行了检索的情况下作出的。

☒ 本通知书引用下述对比文献(其编号在今后的审查过程中继续沿用):

回函请寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收

编号	文件号或名称	公开日期 (或抵触申请的申请日)
1	JP2000-251395A	2000.9.14
2	CN1264122A	2000.8.23
3		
4		

6. 审查的结论性意见:

☐ 关于说明书:

- ☐ 申请的内容属于专利法第 5 条规定的不授予专利权的范围。
☐ 说明书不符合专利法第 26 条第 3 款的规定。
☐ 说明书不符合专利法第 33 条的规定。
☐ 说明书的撰写不符合实施细则第 18 条的规定。

☒ 关于权利要求书:

- ☐ 权利要求_____不具备专利法第 22 条第 2 款规定的新颖性。
☐ 权利要求_____不具备专利法第 22 条第 3 款规定的创造性。
☐ 权利要求_____不具备专利法第 22 条第 4 款规定的实用性。
☒ 权利要求 1-6 属于专利法第 25 条规定的不授予专利权的范围。
☒ 权利要求 9, 11, 20 不符合专利法第 26 条第 4 款的规定。
☐ 权利要求_____不符合专利法第 31 条第 1 款的规定。
☐ 权利要求_____不符合专利法第 33 条的规定。
☐ 权利要求_____不符合专利法实施细则第 2 条第 1 款关于发明的定义。
☐ 权利要求_____不符合专利法实施细则第 13 条第 1 款的规定。
☒ 权利要求 1-7, 12, 14, 17, 19 不符合专利法实施细则第 20 条的规定。
☐ 权利要求_____不符合专利法实施细则第 21 条的规定。
☐ 权利要求_____不符合专利法实施细则第 22 条的规定。
☐ 权利要求_____不符合专利法实施细则第 23 条的规定。

上述结论性意见的具体分析见本通知书的正文部分。

7. 基于上述结论性意见, 审查员认为:

- ☐ 申请人应按照通知书正文部分提出的要求, 对申请文件进行修改。
☒ 申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由, 并对通知书正文部分中指出的不符合规定之处进行修改, 否则将不能授予专利权。
☐ 专利申请中没有可以被授予专利权的实质性内容, 如果申请人没有陈述理由或者陈述理由不充分, 其申请将被驳回。

8. 申请人应注意下述事项:

- (1) 根据专利法第 37 条的规定, 申请人应在收到本通知书之日起的 3 个月内陈述意见, 如果申请人无正当理由逾期不答复, 其申请将被视为撤回。
(2) 申请人对其申请的修改应符合专利法第 33 条的规定, 修改文本应一式两份, 其格式应符合审查指南的有关规定。
(3) 申请人的意见陈述书和/或修改文本应邮寄或递交国家知识产权局专利局受理处, 凡未邮寄或递交给受理处的文件不具备法律效力。
(4) 未经预约, 申请人和/或代理人不得前来国家知识产权局专利局与审查员举行会晤。

9. 本通知书正文部分共有 3 页, 并附有下列附件:

- ☒ 引用的对比文件的复印件共 2 份 10 页。
☒ 审查 9 部 审查员 石红艳 74

审查部门业务专用章

(未加盖审查业务专用章的通知书不具备法律效力)

第一次审查意见通知书正文

1. 权利要求 1-6 不清楚, 不符合专利法实施细则第二十条第一款的规定; 同时, 属于专利法第二十五条第一款规定的不能被授予专利权的范围。

权利要求 1 请求保护一种记录介质, 其包含基于至少一个原始内容产生的重制内容; 关于原始内容的原始版权信息; 关于重制内容的重制版权信息。因其要求保护的为记录介质, 属于一种产品, 应该从产品本身的材料、形状、结构等技术特征加以描述, 而此权利要求中仅为对所述记录介质上所记录的信息信号的描述, 不属于记录介质本身的具体的物理结构特征, 因此造成该权利要求保护范围不清楚。同时, 由于其仅为对所述记录介质上记录的信息信号的描述, 是一种人为的规定, 而不是一种利用自然规律和自然力的技术方案, 属于专利法第二十五条第一款第(二)项所述的智力活动的规则和方法的范围, 因此不能被授予专利权(参见审查指南第二部分第一章第 3.2 节)。

类似的, 从属权利要求 2-6 也未能克服上述缺陷, 不符合专利法第二十条第一款的有关规定, 同时属于专利法第二十五条第一款第(二)项所述的智力活动的规则和方法的范围, 因此不能被授予专利权。

2. 权利要求 7, 12, 14, 17, 19 不清楚, 不符合专利法实施细则第二十条第一款的有关规定。

(1) 权利要求 7 两处所述“关于”含义不确定, 可将该措辞删除。类似的, 权利要求 12, 14, 17, 19 也存在上述问题。

(2) 权利要求 12 所述“关于原始内容的原始版权信息和关于重制内容的重制版权信息记录在用于至少一个音频包的专有标题中, 在其中记录重制内容”语言表述不清楚; “其中”指代不清楚。

(3) 权利要求 14 所述“由处理器产生的鉴别信息和版权信息”与上文记载的不一致。上文并未记载所述“处理器”产生了“鉴别信息”。

(4) 权利要求 17 所述“其中记录单元在标题中记录了原始版权信息和重制版权信息, 在标题中关于重制内容的标题信息被记录在其中”语言表述不清楚。

3. 权利要求 9, 11, 20 未以说明书为依据, 不符合专利法第二十六条第四款的有关规定。

(1) 权利要求 9 所述“一种与在制作原始内容时所采用的编码方法不同的编码方法来制成重制内容”在说明书中没有记载。

(2) 权利要求 11 所述“原始内容包括”“视频数据”在说明书没有记载。类似的, 权利要求 20 也存在上述问题。

4. 对比文件 1 和 2 均公开了一种在记录介质上记录信息的方法, 其中(对比文件 1: 见说明书第 9 栏第 42 行至第 19 栏第 12 行, 附图 1-17; 对比文件 2: 说明书第 6 页第 20 行至第 46 页, 附图 1-15)披露了以下技术特征: 所述方法包括如下步骤: 基于原始信息制作拷贝信息; 记录所述拷贝信息; 记录原始信息的原始版权信息和拷贝信息的版权信息。因此, 提请申请人注意, 对比文件 1 或 2 均可能影响权利要求 7-20 的新颖性或创造性。在按照以上审查意见对权利要求进行修改的同时, 还应注意权利要求 7-20 相对于对比文件 1 或 2 应具备新颖性和创造性, 以符合专利法第二十二条第二、三款的有关规定。

基于上述理由, 本申请按照目前的文本不能被授予专利权。申请人应在本通知书指定的四个月期限内, 按照本通知书提出的审查意见对申请文件进行修改, 克服所存在的缺陷, 否则本申请将被驳回。请申请人注意, 答复第一次审查意见通知书时, 必须针对本通知书正文部分指出的问题进行修改, 否则将导致修改文本不予接受; 对权利要求进行修改的同时应对说明书技术方案部分作适应性修改; 对申请文件的修改应当符合专利法第三十三条的规定, 不得超出原说明书和权利要求书记载的范围, 否则将导致驳回。

The Patent Office of the People's Republic of China

Address: No. 6 XITUCHENG ROAD, JIMEN BRIDGE, HAIDIAN DISTRICT, BEIJING

Post Code: 100088

Applicant: <u>SAMSUNG ELECTRONICS CO. LTD</u>	ISSUING DATE: <u>2004.1.16</u>
Agent: <u>Ying Ma</u>	
Application No.: <u>02118690.1</u>	
Title: <u>RECORDING MEDIUM CONTAINING CD</u>	

THE FIRST OFFICE ACTION

1. ☒ The applicant filed a request for substantive examination on Year ____ Month ____ Day ____ according to Article 35 Paragraph 1 of the Patent Law. The examiner has conducted a substantive examination to the above-mentioned patent application.
☐ According to Article 35 paragraph 2 of the Patent Law, Chinese Patent office decided on its own initiative to conduct a substantive examination to the above-mentioned patent application.
2. ☒ The applicant requested to take
 Year 2001 Month 3 Day 8 on which an application is filed with the KR patent office as the priority date.
 Year ____ Month ____ Day ____ on which an application is filed with the ____ patent office as the priority date.
 Year ____ Month ____ Day ____ on which an application is filed with the ____ patent office as the priority date.
☒ The applicant has submitted the copy of the earliest application document certified by the competent authority of that country.
☐ According to Article 30 of the Patent Law, if the applicant has not yet submitted the copy of the earliest application document certified by the competent authority of that country, the declaration for Priority shall be deemed not to have been made.
☐ This application is a PCT application.
3. ☐ The applicant submitted the amended document(s) on Year ____ Month ____ Day ____ and Year ____ Month ____ Day ____ after examination, ____ submitted on Year ____ Month ____ Day ____ is/are not accepted.
 ____ submitted on Year ____ Month ____ Day ____ is/are not accepted
 because the said amendment(s) ☐ is/are not in conformity with Article 33 of the Patent Law.
☐ is/are not in conformity with Rule 51 of the Implementing Regulations.
☐ The concrete reason(s) for not accepting the amendment(s) is/are presented on the text of Office Action.
4. ☒ The examination has been conducted based on the application text as originally filed.
☐ The examination has been conducted based on the following text(s):
 page(s) ____ of the specification, Claim(s) ____, and figure(s) ____ in the original text of the application submitted on the filing day.
 page(s) ____ of the specification, claim(s) ____, and figure(s) ____ submitted on Year ____ Month ____ Day ____
 page(s) ____ of the specification, claim(s) ____, and figure(s) ____ submitted on Year ____ Month ____ Day ____
5. ☐ This notification was made without undergoing search.
☒ This notification was made with undergoing search.
☒ The following reference document(s) is/are cited: (the reference numeral(s) thereof will be used in the examination procedure hereafter)

NO.	Reference No. or Title	Publishing Date
1	JP2000-257395A	2000.9.14
2	CN 1264122A	2000.8.23
3		
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6. Concluding comments

☐ on the specification:

- ☐ The contents of the application are in contrary to Article 5 of the Patent Law and therefore are not patentable.
- ☐ The contents of the application do not possess the practical applicability as prescribed in Paragraph 4 of Article 5 of the Patent Law.
- ☐ The specification is not in conformity with the provision of Paragraph 3 of Article 26 of the Patent Law.
- ☐ The presentation of the specification is not in conformity with the provision of Rule 18 of the Implementing Regulations.

☒ on the claims:

- ☒ Claim(s) 1-6 belong(s) to non-patentable subject matter as prescribed in Article 25 of the Patent law.
- ☐ Claim(s) _____ do(es) not comply with the definition of a patent as provided in Rule 2 paragraph 1 of the Implementing Regulations.
- ☐ Claim(s) _____ do(es) not possess novelty as requested by Article 22 paragraph 2 of the Patent Law.
- ☐ Claim(s) _____ do(es) not possess inventiveness as requested by Article 22 paragraph 3 of the Patent Law.
- ☐ Claim(s) _____ do(es) not possess practical applicability as requested by Article 22 paragraph 4 of the Patent Law.
- ☒ Claim(s) 9, 11, 20 do(es) not comply with the provision of Article 26 paragraph 4 of the Patent Law.
- ☐ Claim(s) _____ do(es) not comply with the provision of Article 31 paragraph 1 of the Patent Law.
- ☒ Claim(s) 1-7, 12, 14, 17, 19 do(es) not comply with provision of Rules 20 of the Implementing Regulations.
- ☐ Claim(s) _____ do(es) not comply with the provision of Article 9 of the Patent Law.
- ☐ Claim(s) _____ do(es) not comply with the provision of Rule 12 paragraph 1 of the Implementing Regulations.

The detailed analysis for the above concluding comments is presented on the text of this Office Action.

7. Based on the above concluding comments, the examiner is of the opinion that

- ☐ The applicant should amend the application document(s) in accordance with the requirement as specified in the Office Action.
- ☒ The applicant should, in his observation, expound the patentability of the application of the application, amend the defects pointed out in the Office Action; or the application can hardly be approved.
- ☐ The examiner deems that the application lacks substantive features to make it patentable. Therefore, the application will be rejected if no convincing reasons are provided to prove its patentability.

8. The applicant should pay attention to the following matters:

- (1) According to Article 37 of the Patent Law, the applicant is required to submit his observations within Four months upon receipt of this Office Action. If the time limit for making response is not met without any justified reason, the application to have been withdraw.
- (2) The amendment(s) made by the applicant must meet the requirements of Article 33 of the Patent Law. The amended text should be in duplicate, its format should conform to the related confinement in the Guidance for Examination.
- (3) The applicant and/or the agent should not go to the Chinese Patent Office to interview the examiner without being invited.
- (4) The observation and/of the amended document(s) must be mailed or delivered to the Receiving Section of the Chinese Patent Office. No legal effect shall apply for any document(s) that not mailed to or reached the Receiving Section.

9. The text of this Office Action contains 2 page(s), and has the following attachment(s):

- ☒ 2 copies of the cited references, all together 74 pages.
- ☐

Examination Dept. No. _____ Examiner _____ Seal of Examination Dept. for business only _____

(If the Office Action wasn't stamped by the specified seal, it has no legal effect)

TEXT OF THE FIRST OFFICE ACTION

1. **Claims 1-6** are not clear, and therefore do not comply with the provision of Rule 20, paragraph 1 of the Implementing Regulations of the Patent Law of China. At the same claims 1-6 fall under the provision of Article 25, paragraph 1 of the Patent Law of China that no patent right shall be granted.

Claim 1 seeks to protect a recording medium containing remake content made based on at least one original content; original copyright information on the original content; and remake copyright information on the remake content. Since claim 1 seeks for protection of a recording medium, which is a product. Therefore, claim 1 shall describe the material, shape, structure and other technical features contained in the product itself. However, claim 1 describes only the information signal recorded on the recording medium, which does not belong to the concrete physical structural feature contained in the recording medium itself. Therefore, the extent of protection is claim 1 is not clear. In the meantime, since claim 1 describes only the information signal recorded on the recording medium, which is an artificial prescription rather than a technical solution utilizing natural laws and natural forces and falls into the scope of rules and methods for mental activities stated in Article 25, paragraph 1, item (2) of the Patent Law of China, no patent right shall be granted (see Part II, Chapter 1, section 3.2 of the Guidelines for Patent Examination).

Similarly, the **dependent claims 2-6** fail to overcome the above-mentioned defect, and therefore do not comply with the relevant provision of Article 20, paragraph 1 of the Patent Law of China and fall into the scope of rules and methods for mental activities stated in Article 25, paragraph 1, item (2) of the Patent Law of China. Therefore, no patent right shall be rejected.

2. **Claims 7, 12, 14, 17 and 19** are not clear, and therefore do not comply with the relevant provision of Rule 20, paragraph 1 of the Implementing Regulations of the Patent Law of China.

(1) A defect in wording is pointed out, details omitted.

(2) In **claim 12** the expression that "original copyright information on the original

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content and remake copyright information on the remake content are recorded in a private header for at least one audio packet in which the remake content is recorded” is not clearly expressed; it is not clear what the word “which” refers to.

(3) In **claim 14** the expression of “identification information and copyright information generated by the processor” is not consistent with the disclosure contained in the preceding part of the claims. The preceding part of the claims does not disclose that “the processor” generates “identification information”.

(4) In **claim 17** the expression that “wherein the recording unit records the original copyright information and the remake copyright information in a header in which header information on the remake content is recorded” is not clearly expressed.

3. **Claims 9, 11 and 20** are not based on the specification, and therefore do not comply with the relevant provision of Article 26, paragraph 4 of the Patent Law of China.

(1) In **claim 9** the expression that “the remake content is made by a different coding method from a coding method by which the original content is made” is not disclosed in the specification.

(2) In **claim 11** the expression that “the original content includes video data” is not disclosed in the specification. Similarly, claim 20 has the aforesaid problem.

4. **References 1 and 2** disclose a method for recording information on a recording medium, wherein (reference 1: line 42, column 9 to line 12, column 19 of the specification, and Figs. 1-17; reference 2: lines 20-46, page 6 of the specification, and Figs. 1-15) the following technical features are disclosed: the method comprises the steps of: making copy information based on original information; recording the copy information; and recording original copyright information on the original information and copyright information on the copy information. Therefore, the applicant shall note that reference 1 or reference 2 will affect novelty or inventiveness of claims 7-20. Having made amendments to the claims in accordance with the above-mentioned examination opinions, the applicant shall also note that claims 7-20 shall possess novelty and inventiveness in comparison with reference 1 or reference 2 so as to comply with the relevant provisions of Article 22, paragraphs 2 and 3 of the Patent

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Law of China.

Based on the reasons mentioned above, the present application shall not be granted a patent right under the current text. The applicant shall, within the four-month time limit specified in the office action, amend the application document in accordance with the examination opinions provided in the office action and overcome the existing defects. Otherwise, the present application shall be rejected. **The applicant shall note** that, in response to the first office action he shall amend the problems pointed out in the text of the office action, otherwise the amended text shall be not accepted; that while amending the claims he shall also make corresponding amendments to the technical solution section of the specification; and that any amendment made to the application document may not go beyond the scope of the disclosure contained in the initial specification and claims so as to comply with the provision of Article 33 of the Patent Law of China, otherwise the present application shall be rejected.

Examiner: Shi Hongyan

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